



**Billing Code: 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

**[Docket No. 160211104-6104-01]**

**RIN 0648-BF70**

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Gag Management Measures**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes to implement management measures described in a framework action to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), as prepared by the Gulf of Mexico Fishery Management Council (Council). If implemented, this action would revise the recreational closed season for gag and the recreational minimum size limits for gag and black grouper in the Gulf of Mexico (Gulf) exclusive economic zone. The purpose of this proposed rule is to optimize recreational opportunities to harvest gag and to address inconsistencies in the recreational minimum size limits for gag and black grouper in the Gulf and South Atlantic.

**DATES:** Written comments must be received on or before *[insert date]*

30 days after date of publication in the *FEDERAL REGISTER*].

**ADDRESSES:** You may submit comments on the proposed rule, identified by "NOAA-NMFS-2016-0010" by either of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0010](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0010), click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- **Mail:** Submit written comments to Richard Malinowski, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

**Instructions:** Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic copies of the framework action, which includes an

environmental assessment, a regulatory impact review, and a Regulatory Flexibility Act (RFA) analysis may be obtained from the Southeast Regional Office Web Site at

[http://sero.nmfs.noaa.gov/sustainable\\_fisheries/gulf\\_fisheries/reef\\_fish/2016/gag\\_and\\_black\\_grouper\\_framework/index.html](http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/reef_fish/2016/gag_and_black_grouper_framework/index.html)

**FOR FURTHER INFORMATION CONTACT:** Richard Malinowski, Southeast Regional Office, NMFS, telephone: 727-824-5305, e-mail: [rich.malinowski@noaa.gov](mailto:rich.malinowski@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The Gulf reef fish fishery, which includes gag and black grouper, is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

## **Background**

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to achieve on a continuing basis the optimum yield from federally managed fish stocks. This mandate is intended to ensure that fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, while also protecting marine ecosystems.

The 2014 Southeast Data, Assessment and Review (SEDAR 33)

benchmark stock assessment indicates that the Gulf gag stock is not overfished or undergoing overfishing as of 2012, the last year of data used in SEDAR 33. However, as described in the framework action, the Council's Reef Fish Advisory Panel, the Council's Science and Statistical Committee (SSC), and public testimony, all suggested that the Council use caution when setting the gag annual catch limits (ACL) and annual catch targets (ACT). Therefore, the Council decided not to modify the Gulf gag ACL or ACT in this framework action.

Additionally, the 2010 SEDAR 19 benchmark assessment for black grouper found that the Gulf black grouper stock was neither overfished nor undergoing overfishing.

#### **Management Measures Contained in this Proposed Rule**

This rule would revise the recreational closed season for gag and the recreational minimum size limits for gag and black grouper in the Gulf.

##### *Gag Recreational Closed Season*

The current closed season for the gag recreational sector is January 1 through June 30 and December 3 through December 31, annually. This closed season was established in Amendment 32 to the FMP to help prevent the gag recreational ACL from being exceeded (77 FR 6988, February 10, 2012).

This rule would revise the gag recreational closed season to be from January 1 to May 31, annually. The intent of this revised closed season would be to reduce the amount of dead discards of gag that occur during the Gulf's recreational season for red snapper that begins on June 1, annually, and to extend the gag recreational fishing season beyond the current December closure date to provide the opportunity for the recreational sector to harvest the recreational ACL. The gag recreational ACT was only exceeded once, and the recreational ACL has never been exceeded since ACLs and ACTs were established for gag in 2011.

#### *Gag and Black Grouper Minimum Size Limits*

The current gag and black grouper recreational minimum size limits in Gulf Federal waters are both set at 22 inches (55.9 cm), total length (TL). The current gag and black grouper minimum size limit in South Atlantic Federal waters is 24 inches (61.0 cm), TL for both species and for both the commercial and recreational sectors. For the state of Florida, in state waters off Monroe County in the Gulf, the recreational minimum size limit for gag and black grouper is 24 inches (61.0 cm), TL. This proposed rule would increase the recreational minimum size limit for both species to 24 inches (61.0 cm), TL, to be consistent with the Federal waters of the South Atlantic and state waters off Monroe County, Florida. The Council decided that the

benefits of having a size limit for these species that is consistent with both the South Atlantic and the state size limits for the waters off Monroe County, Florida, will outweigh any impacts of increased discard rates for these species. Furthermore, gag are sometimes misidentified as black grouper and having the same recreational minimum size limit for gag and black grouper may assist the public in complying with the applicable regulations for gag and black grouper. Additionally, increasing the recreational minimum size limit for these species is expected to provide the opportunity for more gag and black grouper to become sexually mature and spawn.

#### **Classification**

Pursuant to section 304(b) (1) (A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the framework action, the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

The factual basis for this determination is as follows:

A description of this proposed rule, why it is being considered, and the objectives of this proposed rule are contained in the preamble and in the **SUMMARY** section of the preamble. The Magnuson-Stevens Act provides the statutory basis for this proposed rule.

This proposed rule, if implemented, would not be expected to directly affect any small entities. This proposed rule would modify the gag and black grouper recreational minimum size limits and the gag recreational season in the Gulf. Only recreational anglers, who may fish from shore, man-made structures, private, rental, or charter vessels, and headboats, are allowed a bag or possession limit of grouper species in the Gulf. Captains or crew members on charter vessels or headboats, as well as commercial vessels, cannot harvest or possess gag or black grouper under the recreational bag limits. As a result of only recreational anglers being allowed a bag or possession limit, only recreational anglers would be directly affected by the proposed changes to the gag and black grouper recreational minimum size limits and the gag recreational season dates. Recreational anglers, however, are not considered to be small entities under the RFA and the economic effects of this proposed rule on these anglers are outside the scope of the RFA.

Charter vessels and headboats (for-hire vessels) sell fishing

services to recreational anglers. Because the proposed change in the gag and black grouper minimum size limits and the change to the gag recreational season would not directly alter the services sold by these vessels, this proposed rule would not directly apply to or regulate their operations. Any change in demand for these fishing services, and associated economic effects, as a result of changing the minimum size limits and recreational season would be a consequence of behavioral change by anglers, secondary to any direct effect on anglers and, therefore, an indirect effect of the proposed rule. Because the effects on for-hire vessels would be indirect, they fall outside the scope of the RFA.

The information provided above supports a determination that this rule would not have a significant economic impact on a substantial number of small entities. Because this rule, if implemented, is not expected to have a significant economic impact on any small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this proposed rule. Accordingly, this rule does not implicate the Paperwork Reduction Act.

**List of Subjects in 50 CFR Part 622**



Black grouper, Fisheries, Fishing, Gag, Gulf, Recreational, Reef fish, Size limits.

Dated: February 25, 2016

---

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

**PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC**

1. The authority citation for part 622 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 622.34, paragraph (e) is revised to read as follows:

**§ 622.34 Seasonal and area closures designed to protect Gulf reef fish.**

\* \* \* \* \*

(e) *Seasonal closure of the recreational sector for gag.*

The recreational sector for gag, in or from the Gulf EEZ, is closed from January 1 through May 31. During the closure, the bag and

possession limits for gag in or from the Gulf EEZ are zero.

\* \* \* \* \*

3. In § 622.37, paragraphs (b) (1) and (b) (5) (ii) are revised to read as follows:

**§ 622.37 Size limits.**

\* \* \* \* \*

(b) \* \* \*

(1) *Gag*--(i) For a person not subject to the bag limit specified in § 622.38 (b) (2)--22 inches (55.9 cm), TL.

(ii) For a person subject to the bag limit specified in § 622.38(b) (2)--24 inches (61.0 cm), TL.

\* \* \* \* \*

(5) \* \* \*

(ii) For a person subject to the bag limit specified in § 622.38(b) (2)--24 inches (61.0 cm), TL.

\* \* \* \* \*

[FR Doc. 2016-04655 Filed: 3/2/2016 8:45 am; Publication Date: 3/3/2016]